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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178539
Party	Defendant Omnisource DDS, LLC
Correspondence Address	ERIK M. PELTON ERIK M. PELTON & ASSOCIATES, PLLC P. O. BOX 100637 ARLINGTON, VA 22210 UNITED STATES emp@tm4smallbiz.com
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Attachments	AQUAJETT - response to Motion to Compel - FINAL.pdf ( 21 pages )(154760 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SmithKline Beecham Corporation  
Opposer,

v.

Omnisource DDS, LLC,  
Applicant.

Opposition No. 91178539

Application Serial No. 78893144

Mark:

**AQUAJETT**

**RESPONSE TO OPPOSER'S MOTION TO COMPEL**

COMES NOW Applicant Omnisource DDS, LLC, by and through counsel, and responds to the Motion to Compel (the "Motion") filed by Opposer on September 19, 2008.

For the reasons detailed herein, Opposer's Motion to Compel should be denied because it lacks good faith and because it fails on the merits. Even if Opposer's Motion were made in good faith, Opposer has failed to meet its burden to demonstrate that Applicant has not cooperated in discovery or has not produced requested discovery which is not protected by the scope of attorney work product.

**I. OPPOSER'S LACK OF GOOD FAITH**

Opposer's Motion to Compel is a clear attempt to delay this proceeding, lacks merit, and lacks good faith. Opposer's Motion to Compel does not contain a separate signed statement from the attorney that he has made a good faith effort to resolve the issues presented in the Motion.

Pursuant to 37 C.F.R. § 2.120(e) and TBMP 523.02, a Motion to Compel "must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement."

In addition to the absence of a real statement of good faith, Opposer's actions prior to the filing of the motion indicate a lack of good faith. For example:

- Counsel for Opposer wrote to counsel for Applicant seeking supplemental discovery responses on September 17, 2008, exactly six (6) months after Applicant served its discovery responses on March 17, 2008. See Bertin letter to Pelton of September 17, 2008, attached to Opposer's Motion as Exhibit B.
- The September 17, 2008, facsimile and e-mail letter from counsel for Opposer was transmitted after 8 pm E.S.T.
- The September 17, 2008, facsimile and e-mail letter from counsel for Opposer requested a response including supplemental discovery responses by the close of business on September 18, 2008 – less than twenty-four (24) hours after the letter was sent. See Bertin letter to Pelton of September 17, 2008, attached to Opposer's Motion as Exhibit B.
- Despite a “deadline” imposed by Opposer of less than twenty-four (24) hours, Applicant made a good faith effort to produce additional information to Opposer. See Pelton facsimile to Bertin of September 18, 2008, attached to Opposer's Motion as Exhibit C.
- Opposer's Motion was filed on September 19, 2008, one day prior to the scheduled commencement of Opposer's testimony period.<sup>1</sup>

Opposer's Motion notes that Opposer proposed an extension of the testimony deadlines. However, this request was made prior to any notification to Applicant of what the perceived discovery “issues” were, and was made nearly six months after Applicant served its discovery

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<sup>1</sup> While Applicant does not contend that the Motion is untimely, the timing of Opposer's filing, when viewed in light of the other background facts and dates, tends to show Opposer's lack of good faith. Note also that Opposer's Motion for Summary Judgment was similarly filed on April 8, 2008, the day before Opposer's testimony period was to begin under the Board's schedule at the time. See TTAB Docket Nos. 2 (Scheduling Order) and 13 (Opposer's Motion for Summary Judgment).

responses. Opposer's proposed extension was an attempt to strong arm Applicant into an extension of deadlines without any documented need. See September 16, 2008, email from counsel for Opposer, attached hereto as Exhibit AA. Opposer's alleged justification for needing an extension, according to the email from its counsel, is "because the Board reset these deadlines without any advance notice." See Exhibit AA. Applicant is obviously not responsible for the Board's set deadlines. Any extension such as the one requested by Opposer would benefit only Opposer, while a delay prejudices Applicant. Instead of filing a motion to extend or postpone the testimony deadlines, Applicant – knowing that those deadlines were recently set by the Board – filed the Motion to Compel in an attempt to delay this proceeding.

Opposer's claims it had "no choice" but to file the Motion. Opposer's predicament, namely the failure to follow up Applicant's discovery responses for six months and then making a request for Applicant to produce supplemental discovery responses within less than twenty-four (24) hours, is entirely due to its own delay and inaction.

In addition, Opposer's Motion is untimely as it comes many months after Applicant produced its discovery responses, more than seven (7) months following the close of the discovery period, and after Applicant filed a Motion for Summary Judgment based upon the exact same discovery.

- Applicant's initial discovery responses were served on November 8, 2007.
- The close of discovery occurred on February 9, 2008, more than seven months prior to the September 17, 2008, letter from Opposer seeking supplemental responses. See the Initial Scheduling Order (Board Docket No. 2)
- Supplemental responses to Opposer's interrogatories and requests for production were served by Applicant on February 25, 2008.

- Opposer deposed the principal for Applicant on February 27, 2008.
- Applicant served responses to Opposer's second interrogatories and requests for production on March 11, 2008. See Exhibit A to Opposer's Motion.
- Opposer's Motion for Summary Judgment was filed on April 8, 2008, nearly two months following the close of discovery. See Board Docket No. 13. If Applicant's discovery response were inadequate at the time, Opposer should have brought a Motion to Compel in April 2008 prior to filing a Motion for Summary Judgment.

For all of the foregoing reasons, as well as those discussed below, the Motion to Compel should be denied.

## **II. OPPOSER'S ARGUMENT**

Opposer's Motion refers to several specific interrogatories for which Opposer requests Applicant produce supplemental responses. Opposer has failed to demonstrate that non-privileged information has been withheld by Applicant. Regarding each allegation of Opposer, sufficient responses have already been produced by Applicant or are protected by attorney work-product.

### **A. Interrogatory Nos. 1, 2, and 4**

Regarding Interrogatory Nos. 1, 2 and 4, Opposer requests additional information regarding the meaning of Applicant's mark and how it differs from the meaning of Opposer's mark along with information comparing the appearances of the marks. The "meanings" of the mark is a matter which on its face (a) is discernable from common reference materials, including dictionaries, which are equally and publicly available to Opposer, and (b) to the extent it calls for any analysis of the meanings and the relationships thereof, calls for material which is clearly

protected by the doctrine of attorney work product. Fed. R. Civ. P. The differences in appearances are similarly plain and deduced from the marks themselves, and any analysis thereof is protected by the work product doctrine.

### **B. Third Party Marks**

Regarding Interrogatory No. 5, Opposer requests information regarding third party uses of the term AQUA for dental products or products in Class 10. Opposer's Motion (at p.3) cites TBMP § 414(9) in support of its claim. However, that rule relates to knowledge by "the party" and does not relate to materials which are the product of attorney work. Any information of Applicant regarding third party uses of AQUA was derived from the work of Applicant's attorneys and is not discoverable.

Furthermore, this subject was covered in the deposition of William Weissman, DDS on February 27, 2008.

8 Q. Are you aware of any oral irrigator products that  
9 are currently on the market?

10 A. Yes.

11 Q. And could you identify those for me?

12 A. Referring by name?

13 Q. Sure.

14 A. Interplaque puts out an oral irrigator. WaterPik  
15 puts out an oral irrigator. Oral-B has an irrigator,  
16 and those are the ones that come to my mind.

17 Q. Any others?

18 A. Not off the top of my head.

See Weissman Deposition Transcript at p. 15, attached as Exhibit BB.

### **C. Interrogatory Nos. 8-12**

Regarding Interrogatory Nos. 8 through 12, Opposer requests information which was covered by Opposer during the deposition of William Weissman, DDS on February 27, 2008.

Regarding Interrogatory No. 8, Applicant noted in its letter of September 19, 2008, that Applicant cannot recall with specificity the dates or circumstances when it first became aware of Opposer's use of its marks. See Pelton facsimile to Bertin of September 19, 2008, attached to Opposer's Motion as Exhibit C.

Regarding Interrogatory Nos. 8 through 12, the subjects of oral irrigators intended to be sold by Applicant was covered extensively in deposition of Dr. William Weissman.

9

3 Q. Could you tell me a little bit about Omnisource;  
4 what sort of business it is, what sort of business  
5 venture it's engaged in?

6 A. Omnisource is interested in improving oral care  
7 for the general consumer and dental patients.

8 Q. And when you say "interested in improving oral  
9 care," what sorts of activities is Omnisource engaged in  
10 along those lines?

11 A. Developing oral care goods that can be  
12 potentially placed into the marketplace for consumer  
13 use.

14 Q. Okay. Any specific oral care goods?

15 A. General oral care goods such as oral irrigators,  
16 dental floss, chewing gum, mouthwash, toothpaste, and  
17 alike.

....

10

11 Q. The first item that you mentioned in your list,  
12 it was oral irrigator. Could you tell me what an oral  
13 irrigator is?

14 A. An oral irrigator is a device which emits water  
15 in a stream in order to flush out debris in the mouth  
16 between the teeth and gums.

17 Q. Would you only use water with an oral irrigator  
18 or could you also use mouthwash?

19 A. You could use mouthwash also.

20 Q. And oral irrigators, you said that they could be  
21 used to flush spaces between teeth. Could they also be  
22 used to clean teeth themselves?

23 A. If you're asking solely could they be used, some  
24 people could solely use that if they so chose.

25 Q. Solely as opposed to --

1 A. As opposed to brushing, flossing, toothpicks.  
 2 There are several different items that could be used for  
 3 cleaning the teeth.

4 Q. Could they be used to clean gums?

5 A. Yes.

6 Q. Would oral irrigators be used to prevent dental  
 7 diseases?

8 MR. PELTON: I'd like to note an objection to the  
 9 form of the question as speculative.

10 You can go ahead and answer.

11 THE WITNESS: Could you repeat the question?

12 BY MR. BERTIN:

13 Q. Sure. Could patients use an oral irrigator to  
 14 prevent dental diseases?

15 A. To prevent dental diseases, no.

16 Q. No. So as a dentist, if you were to recommend a  
 17 patient to use -- I guess -- let me back up.

18 Have you ever recommend to your patients that  
 19 they use an oral irrigator?

20 A. Yes.

21 Q. And for what purposes have you recommended them?

22 A. To help them maintain a cleaner and healthier  
 23 mouth.

24 Q. And doing so by removing particles between teeth  
 25 and within the mouth?

1 A. Correct.

2 Q. You mentioned earlier toothpaste, toothpicks,  
 3 floss, and toothbrushes. Those oral care goods could be  
 4 used for the same purpose?

5 A. Correct.

6 Q. Cleaning teeth, cleaning gums?

7 A. Correct.

8 Q. Cleaning spaces between teeth?

9 A. Correct.

10 Q. Could your patients -- would it be likely that  
 11 your patients would use both floss, toothbrushes,  
 12 toothpaste, any of those items with an oral irrigator?

13 MR. PELTON: I'd like to note another objection  
 14 as to the question being speculative.

15 THE WITNESS: Could you repeat the question?

16 BY MR. BERTIN:

17 Q. Sure. The question is as a dentist, would you



18 recommend that your patients use exclusively oral  
19 irrigators, or would you recommend that they use both  
20 oral irrigators and toothpaste, toothbrushes, floss; in  
21 other words, use both products rather than one over the  
22 other?  
23 A. Generally, I recommend any or all, whichever they  
24 would be willing to use.  
25 Q. So you wouldn't say to a patient, you should go

13

1 out and get yourself an oral irrigator and you can  
2 forget about brushing and flossing?  
3 A. Correct. That's not something I would say.  
4 Q. Because water flows through an oral irrigator, am  
5 I correct in assuming that would have to use it  
6 somewhere near a source of water?  
7 A. Correct.  
8 Q. And typically, where does the water come from?  
9 Do you hook it up to a sink?  
10 A. Typically, the water comes from a sink.  
11 Q. From the sink itself?  
12 A. Yes.  
13 Q. So patients would typically use the oral  
14 irrigator in a bathroom?  
15 A. Correct.  
16 Q. Do you as a dentist use oral irrigators here at  
17 your office?  
18 A. No.  
19 Q. You do not?  
20 A. Correct.  
21 Q. Having gone to the dentist many times myself, I  
22 recall my own dentist using a device that squirts water  
23 into my mouth. Do you use that type of device here at  
24 your office?  
25 A. I don't know what device that is.

14

1 Q. A device that squirts -- that a dentist would use  
2 to spray water into the patient's mouth.  
3 A. A water sprayer, yes.  
4 Q. Water sprayer. And in your mind, that type of  
5 product is different than an oral irrigator?  
6 A. Yes.  
7 Q. And how is it different, if I may ask?  
8 A. That water sprayer is just for us to use to clean  
9 any debris out of the mouth. Let's say as we're doing a

10 filling or as we're cleaning teeth, just to cleanse the  
11 area so we can see what we're doing. It's not  
12 specifically used to enhance the cleansing of teeth or  
13 gums.

Weissman Deposition Transcript at p. 9-14, attached as Exhibit BB.

With respect to Interrogatory Nos. 15, 16, 22, 23, 24, 25, and 26, see above deposition excerpts and Exhibit BB. Furthermore, Opposer acknowledges that Applicant produced a list of five oral irrigator products. A listing of each product that is expected to potentially compete with the products of Applicant would be a list of hundreds of products which provide oral care, including but not limited to oral irrigators, dental floss, interdental brushes, and interdental pics. Where complete compliance with a particular request would be unduly burdensome, a representative sampling may be provided. See TBMP § 414(2) (2d ed. rev. 2004). Applicant has provided a reasonable sampling of types of goods and competing brands and has met its production burden.

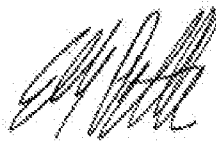
### **III. CONCLUSION**

Opposer's Motion lacks merit and good faith and was brought long after the close of the discovery period and after Opposer failed in its motion for summary judgment. Applicant has met its discovery obligations and Opposer's grievances – even if merited – came long after the close of discovery and long after the Applicant served its discovery responses in a clear attempt to delay the testimony period.

WHEREFORE, Applicant request the Board promptly deny Opposer's Motion to Compel due to a lack of merits and lack of good faith.

Dated this 8th day of October, 2008.

Respectfully Submitted,



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Erik M. Pelton  
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PO Box 100637  
Arlington, Virginia 22210  
TEL: (703) 525-8009  
FAX: (703) 525-8089

Attorney for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of RESPONSE TO OPPOSER'S MOTION TO COMPEL has been served on the following by delivering said copy on October 8, 2008, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Glenn A. Gundersen  
Dechert LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19104-2808

By: 

\_\_\_\_\_  
Erik M. Pelton, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Opposition No. 91178539

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Mark:

**AQUAJETT**

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**RESPONSE TO OPPOSER'S MOTION TO COMPEL**

**EXHIBIT AA**

## Erik Pelton

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**From:** Bertin, Erik [erik.bertin@dechert.com]  
**Sent:** Tuesday, September 16, 2008 4:01 PM  
**To:** Erik Pelton  
**Subject:** AQUAJETT (SmithKline v. Omnisource)

Erik,

As you know, the Board denied SmithKline's motion for summary judgment, but granted its request to amend the notice of opposition. I understand that Omnisource already filed an answer to the amended notice of opposition, so I assume your client intends to proceed with the opposition, at least for the time being.

Under the current schedule, the testimony period is set to begin later this week. Because the Board reset these deadlines without any advance notice, we will need to extend these deadlines for another 60 days. Let me know if you would be amenable to this request.

Our client is getting ready to produce the documents that Omnisource asked for in its discovery requests. However, we need more time to transfer those documents from the client's offices in Pittsburgh to our office in Philadelphia, and to prepare them for your review and inspection. I assume you will need more time to review these documents and to make arrangements for them to be copied.

We also need you to address certain discrepancies in Omnisource's discovery responses. For example, Omnisource objected to a number of SmithKline's requests for admissions on the grounds that they call for "speculation and conjecture." These objections are improper, and we will need Omnisource to provide full and complete responses to each of these requests.

I will be calling you to follow-up on these issues.

Erik Bertin  
Dechert LLP  
1775 I Street NW  
Washington, DC 20006  
202.261.3407 (office)  
703.585.3792 (cell)  
[Erik.Bertin@dechert.com](mailto:Erik.Bertin@dechert.com)

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Mark:

**AQUAJETT**

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**RESPONSE TO OPPOSER'S MOTION TO COMPEL**

**EXHIBIT BB**

09:20:34 1 going to be discussing today?

09:20:35 2 A. Yes.

09:20:35 3 Q. Could you tell me a little bit about Omnisource;  
09:20:41 4 what sort of business it is, what sort of business  
09:20:43 5 venture it's engaged in?

09:20:46 6 A. Omnisource is interested in improving oral care  
09:20:53 7 for the general consumer and dental patients.

09:21:00 8 Q. And when you say "interested in improving oral  
09:21:03 9 care," what sorts of activities is Omnisource engaged in  
09:21:08 10 along those lines?

09:21:09 11 A. Developing oral care goods that can be  
09:21:14 12 potentially placed into the marketplace for consumer  
09:21:18 13 use.

09:21:18 14 Q. Okay. Any specific oral care goods?

09:21:23 15 A. General oral care goods such as oral irrigators,  
09:21:35 16 dental floss, chewing gum, mouthwash, toothpaste, and  
09:21:42 17 alike.

09:21:42 18 Q. Is Omnisource currently developing all those  
09:21:44 19 products or those are simply some examples of what you  
09:21:50 20 might --

09:21:50 21 A. Those are examples of what potentially we may  
09:21:57 22 work with.

09:21:57 23 Q. Dr. Weissman, you are a practicing dentist;  
09:22:18 24 correct?

09:22:18 25 A. Yes.



09:22:18 1 Q. And in fact, we are today here at your office?

09:22:21 2 A. Correct.

09:22:21 3 Q. Is your brother, James Weissman, also a dentist?

09:22:24 4 A. Yes.

09:22:25 5 Q. Does he practice with you?

09:22:26 6 A. No.

09:22:27 7 Q. Does he have his own practice?

09:22:31 8 A. Yes.

09:22:32 9 Q. Is it also here in California?

09:22:33 10 A. Yes.

09:22:33 11 Q. The first item that you mentioned in your list,

09:22:39 12 it was oral irrigator. Could you tell me what an oral

09:22:45 13 irrigator is?

09:22:46 14 A. An oral irrigator is a device which emits water

09:22:55 15 in a stream in order to flush out debris in the mouth

09:22:59 16 between the teeth and gums.

09:23:04 17 Q. Would you only use water with an oral irrigator

09:23:08 18 or could you also use mouthwash?

09:23:10 19 A. You could use mouthwash also.

09:23:12 20 Q. And oral irrigators, you said that they could be

09:23:19 21 used to flush spaces between teeth. Could they also be

09:23:24 22 used to clean teeth themselves?

09:23:28 23 A. If you're asking solely could they be used, some

09:23:34 24 people could solely use that if they so chose.

09:23:37 25 Q. Solely as opposed to --

09:23:38 1 A. As opposed to brushing, flossing, toothpicks.  
09:23:44 2 There are several different items that could be used for  
09:23:47 3 cleaning the teeth.  
09:23:48 4 Q. Could they be used to clean gums?  
09:23:51 5 A. Yes.  
09:23:52 6 Q. Would oral irrigators be used to prevent dental  
09:24:02 7 diseases?  
09:24:04 8 MR. PELTON: I'd like to note an objection to the  
09:24:09 9 form of the question as speculative.  
09:24:11 10 You can go ahead and answer.  
09:24:14 11 THE WITNESS: Could you repeat the question?  
09:24:15 12 BY MR. BERTIN:  
09:24:15 13 Q. Sure. Could patients use an oral irrigator to  
09:24:22 14 prevent dental diseases?  
09:24:25 15 A. To prevent dental diseases, no.  
09:24:31 16 Q. No. So as a dentist, if you were to recommend a  
09:24:38 17 patient to use -- I guess -- let me back up.  
09:24:41 18 Have you ever recommend to your patients that  
09:24:43 19 they use an oral irrigator?  
09:24:46 20 A. Yes.  
09:24:46 21 Q. And for what purposes have you recommended them?  
09:24:49 22 A. To help them maintain a cleaner and healthier  
09:24:55 23 mouth.  
09:24:55 24 Q. And doing so by removing particles between teeth  
09:25:00 25 and within the mouth?

09:25:01 1 A. Correct.

09:25:02 2 Q. You mentioned earlier toothpaste, toothpicks,  
09:25:09 3 floss, and toothbrushes. Those oral care goods could be  
09:25:13 4 used for the same purpose?

09:25:14 5 A. Correct.

09:25:15 6 Q. Cleaning teeth, cleaning gums?

09:25:18 7 A. Correct.

09:25:18 8 Q. Cleaning spaces between teeth?

09:25:21 9 A. Correct.

09:25:22 10 Q. Could your patients -- would it be likely that  
09:25:33 11 your patients would use both floss, toothbrushes,  
09:25:38 12 toothpaste, any of those items with an oral irrigator?

09:25:42 13 MR. PELTON: I'd like to note another objection  
09:25:43 14 as to the question being speculative.

09:25:48 15 THE WITNESS: Could you repeat the question?

09:25:50 16 BY MR. BERTIN:

09:25:50 17 Q. Sure. The question is as a dentist, would you  
09:25:55 18 recommend that your patients use exclusively oral  
09:25:59 19 irrigators, or would you recommend that they use both  
09:26:02 20 oral irrigators and toothpaste, toothbrushes, floss; in  
09:26:08 21 other words, use both products rather than one over the  
09:26:12 22 other?

09:26:12 23 A. Generally, I recommend any or all, whichever they  
09:26:18 24 would be willing to use.

09:26:20 25 Q. So you wouldn't say to a patient, you should go

09:26:23 1 out and get yourself an oral irrigator and you can  
09:26:27 2 forget about brushing and flossing?

09:26:30 3 A. Correct. That's not something I would say.

09:26:34 4 Q. Because water flows through an oral irrigator, am  
09:26:42 5 I correct in assuming that would have to use it  
09:26:46 6 somewhere near a source of water?

09:26:48 7 A. Correct.

09:26:50 8 Q. And typically, where does the water come from?  
09:26:53 9 Do you hook it up to a sink?

09:26:55 10 A. Typically, the water comes from a sink.

09:27:01 11 Q. From the sink itself?

09:27:02 12 A. Yes.

09:27:03 13 Q. So patients would typically use the oral  
09:27:11 14 irrigator in a bathroom?

09:27:14 15 A. Correct.

09:27:15 16 Q. Do you as a dentist use oral irrigators here at  
09:27:20 17 your office?

09:27:20 18 A. No.

09:27:21 19 Q. You do not?

09:27:22 20 A. Correct.

09:27:23 21 Q. Having gone to the dentist many times myself, I  
09:27:40 22 recall my own dentist using a device that squirts water  
09:27:44 23 into my mouth. Do you use that type of device here at  
09:27:47 24 your office?

09:27:48 25 A. I don't know what device that is.

09:27:51 1 Q. A device that squirts -- that a dentist would use  
09:27:56 2 to spray water into the patient's mouth.

09:27:59 3 A. A water sprayer, yes.

09:28:01 4 Q. Water sprayer. And in your mind, that type of  
09:28:04 5 product is different than an oral irrigator?

09:28:09 6 A. Yes.

09:28:09 7 Q. And how is it different, if I may ask?

09:28:14 8 A. That water sprayer is just for us to use to clean  
09:28:21 9 any debris out of the mouth. Let's say as we're doing a  
09:28:24 10 filling or as we're cleaning teeth, just to cleanse the  
09:28:30 11 area so we can see what we're doing. It's not  
09:28:32 12 specifically used to enhance the cleansing of teeth or  
09:28:36 13 gums.

09:28:36 14 Q. In your experience, do other dentists use oral  
09:28:42 15 irrigators in their offices?

09:28:44 16 A. I don't know.

09:28:45 17 MR. PELTON: Object again as to speculative  
09:28:49 18 question.

09:28:52 19 But you can go ahead and answer if you know the  
09:28:54 20 answer.

09:28:55 21 THE WITNESS: I don't know.

09:28:55 22 BY MR. BERTIN:

09:29:00 23 Q. Would you agree that oral irrigators is a product  
09:29:04 24 that would be used by ordinary consumers; in other  
09:29:10 25 words, anyone on the street?

09:29:11 1 A. Yes.

09:29:12 2 Q. Is it a product that would be useful to a person  
09:29:19 3 who wears braces?

09:29:21 4 A. It could be.

09:29:22 5 Q. Would be it useful for a person who wears  
09:29:26 6 dentures?

09:29:29 7 A. No.

09:29:30 8 Q. Are you aware of any oral irrigator products that  
09:29:42 9 are currently on the market?

09:29:44 10 A. Yes.

09:29:44 11 Q. And could you identify those for me?

09:29:47 12 A. Referring by name?

09:29:51 13 Q. Sure.

09:29:52 14 A. Interplaque puts out an oral irrigator. WaterPik  
09:30:02 15 puts out an oral irrigator. Oral-B has an irrigator,  
09:30:08 16 and those are the ones that come to my mind.

09:30:10 17 Q. Any others?

09:30:12 18 A. Not off the top of my head.

09:30:17 19 Q. Do you know where those products are sold?

09:30:24 20 A. In stores.

09:30:26 21 Q. And specifically, what types of stores?

09:30:30 22 A. Here in California, the types of places that I  
09:30:38 23 would recommend my patients to go to would be places  
09:30:40 24 like Rite-Aid, Target and CVS Pharmacy.

09:30:51 25 Q. Just to clarify, Rite-Aid is a pharmacy?